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STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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October 17, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: CC Docket No. 96-451 DA 97-1957 - In the Matter of
Federal-State Joint Board on Universal Service

Dear Secretary Caton:

Enclosed for filing please find an original and four (4) copies of the comments of the New York State Department of Public Service submitted in the above-captioned matter. Also enclosed please find a request that these comments be accepted as a Late-Filed Pleading.

Thank you.

Sincerely,

Lawrence G. Malone

Lawrence G. Malone
General Counsel
New York State
Department of Public Service
3 Empire State Plaza
Albany, New York 12223

enc. 5
cc: Irene Flannery
FCC - Universal Service Branch

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
) CC Docket No. 96-45
Federal-State Joint Board on) DA 97-1957
Universal Service)

REQUEST TO ACCEPT LATE-FILED PLEADING

The New York State Department of Public Service (NYDPS) and the New York State Education Department (NYSED) hereby request that the Commission accept the attached late-filed pleading, "Comments of the New York State Department of Public Service and the New York State Education Department," pursuant to 47 C.F.R. §1.46. In support of our request, NYDPS and NYSED state as follows:

1. The Public Notice dated September 10, 1997 did not request comment on the possible elimination of discount averaging or on distinguishing eligible and ineligible administrative telecommunications, and
2. Accepting this late-filed pleading will not seriously undermine the Commission's ability to complete its analysis on a timely basis.

WHEREAS, the New York State Department of Public Service and the New York State Education Department respectfully request that the Commission accept the attached comments.

Respectfully submitted,



LAWRENCE G. MALONE
General Counsel
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Dated: October 17, 1997
Albany, New York
cc: Parties of Record (via First Class Mail)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	DA 97-1957

**COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
AND STATE EDUCATION DEPARTMENT**

Dated: October 17, 1997
 Albany, New York

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	DA 97-1957

INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) and State Education Department (NYSED) submit these late-filed comments in response to discussions at the application workshop held by the Federal Communications Commission (FCC) and the School and Library Corporation (SLC) in the above-captioned matter on October 10, 1997. Based on those discussions, it is our understanding that there are substantial changes to the school and library program currently under consideration by the FCC. One change apparently would be a retrenchment from the now permissible, and once favored, aggregation of demand at the school district or regional level, while the second would entail an attempt to distinguish between eligible and non-eligible administrative telecommunication services. The NYDPS and NYSED oppose such changes to the school and library program.

I. Disaggregation of Demand and Deaveraging of Discounts Would Contradict a Previously Issued FCC Order And Undermine the Commission's Goals.

In its May 8, 1997 Order and accompanying additions to the Code of Federal Regulations the FCC stated that "[s]chool districts applying for eligible services on behalf of their individual schools may calculate the district-wide percentage of eligible students using a weighted average."¹ On October 10th, however, FCC and Department of Education personnel indicated that applications must now list each individual school, its discount and the specific services for which application is being made, and added that discount averaging may, in fact, be eliminated.

Such a change in the application process, particularly at this late point, would impose substantial hardships on many applicants. The proposal would seriously disadvantage many school districts and libraries, penalizing those that have already done substantial planning and have committed substantial resources to adhere to the plan announced by the FCC. Changing the rules at the eleventh hour would be patently unfair to these institutions.

Effecting this change would likely cause certain applicants to be denied funding as a result of the delay involved in reorganizing established procedures, and could prevent some applications from even being filed in a timely manner. Indeed, many large city school districts that have already devoted

¹ 47 CFR 54.505(b)(1)

substantial resources to this program would be particularly disadvantaged, thereby preventing USF money from reaching many students most in need. Such a result would certainly undermine the FCC's oft-repeated goal of placing all applicants on an equal footing.

The newly proposed process would also be inconsistent with previously mandated procedures and rules of the FCC as set forth in 47 CFR 54.505, procedures and rules upon which school districts have justifiably relied. In addition, the FCC has not provided adequate notice for a change of the magnitude now envisioned. The September 10, 1997 Public Notice refers only to the proposal of the "E-rate Implementation Working Group," which permits discount averaging, and therefore provides inadequate notice of the proposal now apparently under consideration.

If the intent of this proposal is simply to ensure that the USF money is being distributed in accordance with the Telecommunications Act of 1996, such a mechanism could easily be implemented through reporting requirements. In fact, the actions of New York State's school districts in the formation of their technology plans and the NYSED in reviewing and approving such plans have been consistent with the FCC's suggestion that technology plans give priority to those schools that currently have the least amount of telecommunications technology.

Given the time-sensitive nature of the application process, it would be simply unfair, inequitable and inconsistent

with the previously promulgated rules to institute such a radical change in the program at this very late date.

II. There Should Be No Artificial Distinction Between Eligible and Non-Eligible Administrative Telecommunication Services.

The NYDPS and NYSED oppose any attempt to distinguish between eligible and non-eligible administrative telecommunication services for school administrators. Such a distinction has not heretofore been made by the FCC or the administrator, and should not be adopted at this point.

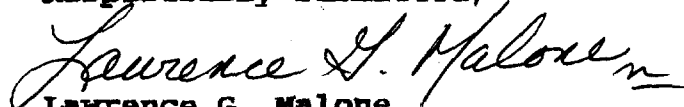
As with the disaggregation proposal addressed above, such a change would also penalize those schools and districts that have already undertaken substantial planning efforts. These schools would be forced to redo a great deal of work, reducing their chances of receiving funding.

In addition, any benefit to be gained by attempting to distinguish between eligible and non-eligible services would certainly be outweighed by the huge administrative burden of mandating and enforcing such a distinction. Since there are already sufficient disincentives and checks and balances within the school system hierarchy that restrict expenditures on non-instructional items, there is no need for additional administrative oversight.

CONCLUSION

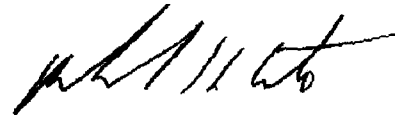
The NYDPS and NYSED appreciate the opportunity to submit the foregoing comments and urge the FCC to refrain from making the changes to the School and Library Program addressed herein.

Respectfully submitted,



Lawrence G. Malone
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Of Counsel
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Dated: October 17, 1997
Albany, New York